SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 107

UNITED STATES OF AMERICA,
Appellant,

vs.

ARNOLD HABIG AND JEROME SCHROERING,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA.

BRIEF FOR THE APPELLEES.

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QUESTION PRESENTED.

The offenses charged in the counts of the indictment dismissed by the district court were based on the contents of tax returns filed, pursuant to extensions of time for filing, after the due dates for filing prescribed by statute. The question presented is whether the offenses were committed on the due dates for filing prescribed by statute, without regard to extensions of time for filing, or on the dates the returns were filed.

SUMMARY OF ARGUMENT.

For the purpose of determining the periods of limitation on criminal prosecutions, section 6531 provides that resort must be had to the rules of section 6513. The rules of section 6513 applicable here are that returns are deemed filed on the due dates for filing prescribed by statute, without regard to extensions of time for filing. Thus, for the purpose of determining the periods of limitation where the offenses charged are based on the contents of returns, the offenses are committed, and the periods begin to run, on the due dates for filing the returns prescribed by statute, without regard to extensions of time for filing.

The rules of section 6513, for the purpose of determining the periods of limitation on criminal prosecutions, must be in conformity with the purposes of section 6531, the criminal statute of limitations, and the general policy of repose to be applied in construing criminal statutes of limitation. Thus whatever limitations and total structural integrity those rules may have in their civil context, claims for refund or credit instituted by the taxpayer, they must here be determined and applied as part of a criminal statute. In this respect it is notable that the rules of section 6513, even when viewed in their civil context, do not expressly require the result pressed by the government, whereas another set of comparable rules, found in section 6501, does expressly require that result. Only if such an express statement existed in the rules of section 6513 should the government's construction be accepted.

The relevant legislative history is not helpful. The legislative history cited by the government is not applicable.

The district court's construction of the rules of section 6513 in their criminal context is the construction arrived at by several other courts, presumably by considered judgments.

ARGUMENT.

The Offenses Were Committed, and Thus the Periods of Limitation Began to Run, on the Due Dates for Filing Prescribed by Statute, Without Regard to Extensions of Time for Filing.

1. Section 6531 provides that periods of limitation begin to run upon "the commission of the offense. . . ." It also provides that "for the purpose of determining the periods of limitation on criminal prosecutions, the rules of section 6513 shall be applicable." This latter provision was new in the statute in 1954. Before the applicability of those rules in criminal prosecutions courts had held that an offense based on the contents of a tax return is committed at the time the return is filed.[1] In so holding, courts were not under any statutory mandate regarding when returns are deemed to have been filed for purposes of determining periods of limitation.[2] It is now the purpose of the rules of section 6513 to provide that mandate.

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1. *Canton* v. *United States*, 226 F. 2d 313, 321 (8th Cir. 1955), *cert. denied*, 350 U. S. 965 (1956); *United States* v. *Yeoman-Henderson, Inc.*, 193 F. 2d 867, 869 (7th Cir. 1952); *United States* v. *Croessant*, 178 F. 2d 96, 98 (3rd Cir. 1949), *cert. denied*, 339 U. S. 927 (1950); *Myres* v. *United States*, 174 F. 2d 329, 334 (8th Cir.), *cert. denied*, 338 U. S. 849 (1949); *Cave* v. *United States*, 159 F. 2d 464, 467 (8th Cir.), *cert. denied*, 331 U. S. 847 (1947); *Guzik* v. *United States*, 54 F. 2d 618, 619 (7th Cir. 1931), *cert. denied*, 285 U. S. 545 (1932).

2. Thus in *Cave*, *supra* note 1, the accused, who had been charged with an offense based on the contents of a return which had been filed on January 15, 1945, argued "that since the tax was not due until March 15, 1945, there could be no criminal attempt to defeat or evade it prior to that time. . . .". The court held that the offense charged "is complete when the taxapayer willfully and knowingly files a false and fraudulent return with intent to defeat or evade any part of the tax due the United States." The government concedes that this result is not viable under the 1954 Code. Govt. Br. 8. The pre-1954 Code cases are, consequently, of no help in answering the question presented by this appeal.

The "rules of section 6513" are by reference incorporated in section 6531. The district court held that they are each to be given full effect in their section 6531 criminal context. It interpreted the incorporation by reference of the several rules of section 6513 to infuse into each separate rule a general applicability in its section 6531 context.

The scope of application of the rules of section 6513 is to be determined by an examination of their meaning in their section 6531 criminal context, and not by an examination of section 6513 independent of section 6531, which is the government's approach. See Govt. Br. 7-10. Whatever the meaning of section 6513 in its original context—civil claims for refund or credit instituted by the taxpayer—the incorporation of its rules into section 6531 requires that they be examined in a different context. There are reasons which lead to this conclusion.

First, it is not section 6513, with its incidental civil associations, echoes and total structural integrity which is incorporated into section 6531; it is instead its "rules" that are incorporated into section 6531. These rules are several. By their incorporation into section 6531 they of necessity, as expressly stated in section 6531, take on a new concern: "'determining the periods of limitation on criminal prosecutions. . . .'" Thus any of the limitations imposed on the rules of section 6513 in their civil context which are not in accord with the purposes of section 6531 should be disregarded.

Second, when Congress has intended the result pressed by the government it has directly said so. In subsection (a) of section 6501, which sets forth the general rule of limitations on assessments and collections, it is provided that taxes "shall be assessed within 3 years after the return was filed (whether or not such return was filed on *or after*

the date prescribed). . . .'"[3] (Emphasis added.) Only such a direct expression of meaning should support the construction urged by the government. *Cf., United States* v. *Scharton,* 285 U. S. 518 (1932), where the Court affirmed a decision dismissing an indictment on the ground that the applicable period of limitation, set forth in the predecessor of section 6531, had run. In opposition to the government's construction that the 6 year period implicitly covered defrauding and attempts to defraud, which the statute did not expressly cover, the Court noted that "there are, however, numerous statutes expressly making intent to defraud an element of a specified offense against the revenue laws." *Id.* at 521.

Third, since the "rules of section 6513" are here part of a criminal limitations statute, they are "to be liberally interpreted in favor of repose. . . ." *United States* v. *Scharton,* 285 U. S. 518, 522 (1932). This means that the purposes of the rules of section 6513 in their civil context should be disregarded to the extent they are not in conformity with the purposes of section 6531 and the general policy of repose.

The rules of section 6513 relevant to this appeal are two. First, there is the rule, several times set forth in section 6513, that in certain circumstances returns are deemed filed, and certain payments made, on the due date for filing,

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3. Subsection (b), with the regulation thereunder, then sets forth rules similar to the rules of section 6513:

> "For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 21 or 24, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day." Section 6501(b)(1).
>
> "Any return, other than a return of tax referred to in paragraph (b) of this section, filed before the last day prescribed by law or regulations for the filing thereof (determined without regard to any extension of time for filing) shall be considered as filed on such last day." Treas. Reg. § 301.6501(b)-1(a).

or payment, prescribed by statute. Second, there is the rule found in the last sentence of subsection (a) which states that extensions of time are to be disregarded in determining the due date prescribed by statute. This rule puts persons charged with tax crimes with respect to returns for which extensions of time were granted on the same footing, for purposes of determining periods of limitation, as those charged with tax crimes with respect to returns for which no extensions of time were granted.

Under these rules the district court held that a return is deemed filed, and therefore the charged offense committed, for the purpose of determining the period of limitation on a criminal prosecution, not at the time of its filing, but at the due date for filing prescribed by statute, without regard to any extensions of time for filing.

The government's position is that the rules of section 6513 must be read as they are structured, related and limited in their civil context. Principally, the government argues, the rule as to when returns are deemed filed must be limited to returns filed before the due date for filing prescribed by statute. While such a reading of that rule may be correct in the civil context, it does not accord with the policy of repose favored in interpreting criminal statutes of limitation. *United States* v. *Scharton*, 285 U. S. 518, 522 (1932).

The government states that the district court's construction means "that the limitations period began to run before a crime had been committed and when no prosecution could have been brought." Govt. Br. 15. This statement begs the question on this appeal, which is the determination of when the charged offenses were committed, and not the determination of the length of the period of limitation, which is exactly 6 years. Section 6531. The holding of the district court thus does not, as the government contends

(Govt. Br. 8), shorten the period of limitation when returns are filed after the due date prescribed for filing. The government's statement is also negated by the very existence of the rule of section 6513 which determines when a return is deemed filed. The government in this argument fails to recognize that for the purpose of criminal periods of limitation the filing of a return is, by virtue of the rules of section 6513, an act defined by statute, and not an innately natural or human act. The government's "no prosecution" hiatus is, therefore, misconceived. As stated by the court in *United States* v. *Black,* 216 F. Supp. 645, 649 (W. D. Mo. 1963):

> "We know of no reason why the Congress of the United States could not select that firm date [the due date for filing prescribed by statute] for the commencement of the running of the statute of limitations on *all* criminal prosecutions rather than any other date it might wish to select; it is a matter within the exclusive power of the Congress. Defendant's arguments on this point are more properly directed to the Congress, not to the courts." (Emphasis added.)

Moreover, while the government expresses concern about a "no prosecution" hiatus in cases where returns are filed after the due date for filing prescribed by statute, it does not seem in the least concerned that such a hiatus also exists in cases where returns are filed before that date. The government concedes that "if, for example, the two corporate returns here in question had been filed April 15, 1960, Section 6513(a) would have caused the six-year statute of limitations to begin running not on April 15, 1960, but on May 15, 1960, the statutory due date." Govt. Br. 8. Thus, although a return has been filed before the statutory due date, the period of limitation does not begin to run until sometime thereafter, and that time is, according to section 6531, when the offense is committed. No prosecution could be brought during this period because

the offense has not yet been committed, in spite of the fact that the return has already been filed.

The government intimates that "a uniform expiration date of the limitations period" is part of the statutory purpose. Govt. Br. 8. In that case the rule applied by the district court is consistently in furtherance of that purpose: offenses are committed, for purposes of determining the periods of limitation, on the uniform due date for filing prescribed by statute.

2. The relevant legislative history is not illuminating. Both the Senate and House committee reports on section 6531 only reiterate the statutory language: "This section also provides that for purposes of the period of limitations on criminal prosecutions the rules of section 6513 shall be applicable." H. R. Rep. No. 1337, 83d Cong., 2d Sess. A416 (1954); S. Rep. No. 1622, 83d Cong. 2d Sess. 588 (1954).

The government resorts to legislative history to find support for its position. See Govt. Br. 10-11. It is the wrong history. The statement in the 1942 House committee report cannot throw any light on the meaning of the rules of section 6513 in criminal cases. This is because the statement was made with respect to the civil purposes of the rules of section 6513: the imposition of limitations on actions by taxpayers filing claims for refund or credit. Those purposes are different from the purposes of those rules in criminal cases. Moreover, in 1942 there existed only a civil context. It was not until 1954 that section 6531 was amended by adding the cross-reference to section 6513.

The government also misuses 1954 legislative history when it states that "at that time, Congress, by adding to Section 6531 the 'rules of section 6513,' said that it was applying to criminal prosecution 'the existing income tax

rule *as to early returns* * * *.' H. Rep. No. 1337, 83d Cong. 2d Sess., p. A416; S. Rep. No. 1622, 83d Cong., 2d Sess., p. 587." Govt. Br. 11. The language quoted by the government is from committee reports on section 6513, and not section 6531. It was not made with reference to criminal prosecutions but in connection with a 1954 amendment to section 6513. That amendment extended to all taxes, other than taxes on incomes, the existing income tax rule. The statement, in full and in context, is: "Subsection (a) of this section extends to all other taxes, in respect of which the taxpayer is required to file a return, the existing income tax rule as to early returns and advance payment." The language quoted by the government thus has no bearing on the question presented by this appeal.

3. The decision of the district court was based on a construction of sections 6513 and 6531 that has been adopted by several courts.[4] While the opinions of these courts do not always clearly reveal the rationale of the construction of the district court, they do arrive at that construction, and presumably by a considered judgment. The construction urged by the government has been accepted by only one court, in an opinion which acknowledges the correctness of a decision which supports the decision below.[5]

The government states that the district court in *United States* v. *Doelker*, 211 F. Supp. 663 (N. D. Ohio 1962), *aff'd on another issue*, 327 F. 2d 343 (6th Cir. 1964), "substituted for the statutory language its own views of what the limitations period should be." Govt. Br. 13. This is

4. *Hull* v. *United States*, 356 F. 2d 919 (5th Cir. 1966); *United States* v. *Doelker*, 211 F. Supp. 663 (N. D. Ohio 1962), *aff'd on another issue*, 327 F. 2d 343 (6th Cir. 1964); *United States* v. *Alper*, 200 F. Supp. 155 (N. J. 1961). *Accord*, *United States* v. *Black*, 216 F. Supp. 645 (W. D. Mo. 1963) and *United States* v. *Scheetz*, 224 F. Supp. 789 (S. D. Ind. 1963).

5. *United States* v. *Hensley*, 257 F. Supp. 987 (N. M. 1966). See Govt. Br. 14n.4.

not true. The court there based its decision on the construction here proposed. As stated by the court in *Doelker:*

> "Referring to the statute, it is notable that the last sentence of Section 6513(a) is limited by its own provisions to the 'purposes of this subsection.' But that phrase should not be construed to exclude from its purpose a determination of the date on which the periods of limitations contained in Section 6531 are to commence. Since Section 6531 expressly provides that for the purposes of determining when the period of limitations shall begin, the rules of Section 6513 shall be applicable, it becomes painfully clear that one of the 'purposes' of Section 6513(a) is the determination of the commencement of the periods of limitations which are contained in Section 6531." (*Id.* at 665) (Footnote omitted.)

The language of the court in *Doelker* quoted by the government, that the 6 year period beginning from the due date for filing prescribed by statute is "long enough," is merely an inevitable inference founded on the rationale of the decision, an inference which reflects the general policy of repose. *United States* v. *Scharton,* 285 U. S. 518, 522 (1932).

CONCLUSION.

The judgment of the district court should be affirmed.

Respectfully submitted,

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